



Citation: *HN v Canada Employment Insurance Commission*, 2023 SST 619

**Social Security Tribunal of Canada
General Division – Employment Insurance Section**

Decision

Appellant: H. N.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (495565) dated August 15, 2022 (issued by Service Canada)

Tribunal member: Audrey Mitchell

Type of hearing: In person

Hearing date: January 31, 2023

Hearing participant: Appellant

Decision date: February 6, 2023

File number: GE-22-3135

Decision

[1] The appeal is dismissed. The Tribunal disagrees with the Claimant.

[2] The Claimant hasn't shown just cause (in other words, a reason the law accepts) for leaving his job when he did. The Claimant didn't have just cause because he had reasonable alternatives to leaving. This means he is disqualified from receiving Employment Insurance (EI) benefits.

Overview

[3] The Claimant left his job as a driver on December 17, 2021. He then applied for EI benefits. The Canada Employment Insurance Commission (Commission) looked at the Claimant's reasons for leaving. It decided that he voluntarily left (or chose to quit) his job without just cause, so it wasn't able to pay him benefits.

[4] I must decide whether the Claimant voluntarily left his job. If so, I must then decide whether he has proven that he had no reasonable alternative to leaving his job.

[5] The Commission says the Claimant voluntarily left his job. It says he could have continued to work the hours his employer made available to him until the employer laid him off. It also says the Claimant could have looked for other suitable work he could do in the winter.

[6] The Claimant disagrees. He states that he and his employer agreed to a temporary lay-off. He says this was because of fewer work hours in the winter and having to drive a long distance with dangerous road conditions.

Issue

[7] Is the Claimant disqualified from receiving benefits because he voluntarily left his job without just cause?

[8] To answer this, I must first address the Claimant's voluntary leaving. I then have to decide whether the Claimant had just cause for leaving.

Analysis

The parties don't agree that the Claimant voluntarily left

[9] The Commission must prove that the Claimant voluntarily left his job. If it does, then the Claimant must show just cause for leaving.¹ To decide if the Claimant voluntarily left his job, I must ask if he had a choice to stay or leave.²

[10] The Claimant says he did not quit his job. He says he and his employer agreed to a temporary three-month lay-off.

[11] The Commission says the employer did not tell the Claimant that it would lay him off. It says the employer hadn't determined that there was a shortage of work.

[12] The Claimant's employer issued a record of employment (ROE). It lists quit as the reason it was issued. The employer told the Commission that the Claimant quit because he wanted to be off and that he was returning to school. The employer said there was no shortage of work. It had to hire a new driver in the Claimant's place.

[13] The Claimant testified about his job. He said he carries and delivers pipes. He said having to go up and down on the flatbed truck in sub-zero temperatures and on slippery surfaces is hard to do in a safe way.

[14] The Claimant also testified about previous jobs he had in the same industry. He said he normally worked 50 to 70 hours in the summer. The Claimant said in the wintertime he was laid off. He said that the work was not reduced little by little, it just stopped due to the weather. The Claimant attached three ROEs from previous employers showing that he was laid off in December of each year.

[15] The Claimant said he spoke to his employer about the amount of work it thought it would have in the winter. The employer didn't know. The Claimant testified that he asked his employer if he could take a temporary lay-off and the employer said he could.

¹ See *Green v Canada (Attorney General)*, 2012 FCA 313.

² See *Canada (Attorney General) v Peace*, 2004 FCA 56.

[16] The Claimant insists that his employer agreed to a lay-off. But I accept his evidence as fact that he asked for the lay-off for reasons that I will consider below. I find that this is consistent with the Commission's evidence from the employer that there wasn't yet a shortage of work. I don't find that because previous employers laid him off in December, that means that this employer would experience a shortage of work in December also.

[17] Even if the Claimant's employer had agreed to the lay-off, I find that the Claimant had a choice to stay at his job or to leave. He chose to leave his job. I find that by doing so, the Claimant voluntarily left his job.

The parties don't agree that the Claimant had just cause

[18] The parties don't agree that the Claimant had just cause for voluntarily leaving his job when he did.

[19] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause.³ Having a good reason for leaving a job isn't enough to prove just cause.

[20] The law explains what it means by "just cause." The law says that you have just cause to leave if you had no reasonable alternative to quitting your job when you did. It says that you have to consider all the circumstances.⁴

[21] It is up to the Claimant to prove that he had just cause.⁵ He has to prove this on a balance of probabilities. This means that he has to show that it is more likely than not that his only reasonable option was to quit. When I decide whether the Claimant had just cause, I have to look at all of the circumstances that existed when the Claimant quit.

[22] The Claimant says he left his job because conditions in the winter are dangerous and that it didn't make sense to work reduced hours in those conditions.

³ Section 30 of the *Employment Insurance Act* (Act) explains this.

⁴ See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c) of the Act.

⁵ See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3.

[23] The Commission says the Claimant didn't have just cause, because he had reasonable alternatives to leaving when he did. Specifically, it says the Claimant could have continued at his job until his employer laid him off. The Commission also says the Claimant could have looked for another job he felt he could do in the winter.

[24] I find that the Claimant had reasonable alternatives to leaving his job when he did. I find that he could have stayed at his job until there was an actual reduction in work an end to the season.

[25] As noted above, at previous jobs, the Claimant worked excess hours in the summertime and was laid off in December. He testified that in 2021, if his employer had told him they could give him at least 40 hours a week in the winter, he would have continued working. But he said otherwise, it wouldn't make sense.

[26] The Claimant's testimony is consistent with what he told the Commission. The Commission's notes show that the Claimant said in the past in the winter months, work was slow and driving conditions were dangerous. He said the with this employer, it was possible that he would work three or four hours and would have to drive all day to do that amount of work.

[27] I understand that it didn't make sense to the Claimant that he would have to work reduced hours in difficult weather conditions. But I find that his decision to leave his job was premature.

[28] The Claimant testified that he had not yet experienced reduced hours of work when he left his job. He said that in his experience, work didn't reduce little-by-little; it just stopped. But I'm not satisfied work had stopped when he left. I accept the Claimant's testimony as fact and find that his employer told him it didn't know if it would have work over the winter.

[29] I asked the Claimant about the Commission's submission that he could have stayed at his job while looking for another job he felt he could do in the winter. The Claimant said he is always looking for better job opportunities.

[30] I have no reason to doubt the Claimant's testimony that he was always looking for other jobs. But I agree with the Commission and find that he could have stayed at his job until he was laid off or found another opportunity.

[31] I find that the Claimant may have had good cause to leave when he did. But I don't find that he has proven that he had just cause. This is because I find that he had reasonable alternatives to leaving when he did.

[32] The Claimant raised many questions about the ROE his employer sent him. He referred to requirements detailed in the *Employment Standards Act*. This isn't something that is in my authority to deal with. I can only decide if the Claimant left his job without just cause. I have found that this is what he did.

Conclusion

[33] I find that the Claimant is disqualified from receiving benefits.

[34] This means that the appeal is dismissed.

Audrey Mitchell

Member, General Division – Employment Insurance Section